

4 MONTH DUE DATE: _____ (Ex: May 15, 2003)(red ink)

REMAND DUE DATE: ~~July 14, 2004~~ (7 day due date, 1 week from today)

16 AUG 04

BOARD OF APPEALS ROUTING SLIP

Art Unit: _____ 2155 _____ Serial No. _____ 09/410,202 _____

	INITIALS	DATE REC'D
DIRECTOR	<u>[Signature]</u>	<u>7/5/04</u>
QAS	_____	_____
SPE	_____	_____
EXAMINER	<u>DZ</u>	<u>8/13/04</u>
LIE	_____	_____

CHECK ONE:

ALLOWED: _____ ABANDONED: _____ OTHER: _____

***Please return routing slip to Director's Office when case is completed.**

To: David Eng

From: Peggy Focarino, Stew Levy, and Peter Wong, Directors TC 2100

Date: August 5, 2004

Re: Remand from the Board of Patent Appeals 09/410,202

The examiner's answer you prepared in the attached application has been reviewed and found to be defective for the following reasons:

The formulations of the 103 rejections are incomplete in that they lack motivation statements or contain incomplete motivation statements. Moreover, the examiner should not use language such as "can be executed", "can be retrieved" and "could have been executed" in making rejections, as this formulation fails to set forth a *prima facie* case of obviousness. For example, just because a method "can be" executed by a microprocessor doesn't mean that it is or would be obvious.

If the rejections can be reformulated to include proper motivation and remove terminology such as "can be" as discussed above, the examiner should prepare a supplemental examiner's answer. If new art is required in order to complete the rejections, prosecution should be reopened and new rejections made. If the rejections cannot be completed (i.e. art needed cannot be found), then it would appear that the application is in condition for allowance.

Corrective action as outlined above should be taken within one week of receipt of this memo. Once the non-final Office action or allowance has been prepared, the case must be given to the QAS shop for review and removal of the mailing flag.



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D C 20231

MEMORANDUM

TO: GROUP 2155 DIRECTOR

FROM: BOARD OF PATENT APPEALS AND
INTERFERENCES

SUBJECT: ORDER REMANDING TO EXAMINER

We are forwarding this application to
your Group for taking further action
consistent with the decision of the Board
remanding this appeal to the Primary Examiner.

Program & Resource Administrator
Board of Patent Appeals and Interferences
308-9797